

REMARKS

The above-identified application has been reviewed in light of the Office Action mailed on September 12, 2008. Claims 31-50 are currently pending, of which, claims 31 and 48 have been amended herein, and new claims 49 and 50 have been added herein. It is respectfully submitted that the claims pending in the application are fully supported by the specification, introduce no new matter, and are patentable over the references of record. Favorable action on the pending claims is earnestly requested.

Applicant would like to thank the Examiner for indicating the allowability of claim 39 if rewritten in independent form including all of the limitations of the base claim and any intervening claim. New independent claim 49 has been added herein to include claim 39 and all of the limitations of the base claim and any intervening claim. Therefore, claim 49 is believed to be allowable over the art of record.

Rejections Under 35 U.S.C. §102

Claims 31-33, 35-36, and 41-48 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,366,479 to McGarry et al. (hereinafter "McGarry"). Applicants respectfully submit that amended independent claims 31 and 48 are each allowable over McGarry because McGarry fails to disclose each and every element of independent claims 31 and 48. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 31 and 48 under 35 U.S.C. §102(b).

According to §2131 of the MPEP, to anticipate a claim, the reference must teach each and every element of the claim. "A claim is anticipated only if each and every element as set

forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Independent claim 31, as amended herein, recites a fastening apparatus for use in endoscopic surgery comprising, *inter alia*, a “recessed region being configured and dimensioned to retain the plurality of vertically stacked fasteners arranged in a linear configuration therein” and a stop spring, “wherein a distal end of the stop spring engages a fastener adjacent to a distal most fastener.”

Similarly, independent claim 48, as amended herein, recites a fastening apparatus for use in endoscopic surgery comprising, *inter alia*, a “fastener storage channel is configured and dimensioned to retain the plurality of fasteners arranged in a linear configuration below the surface of the first half-section” and a stop spring, “wherein the distal end of the stop spring engages a fastener adjacent to the distal-most fastener.”

As shown below in FIGS. 7 and 8, the present application discloses, *inter alia*, a recessed region 70 that is configured and dimensioned to retain a plurality of vertically stacked fasteners 80, that are arranged in a linear configuration therein and a stop spring 170, wherein a distal end of the stop spring 170 engages a fastener adjacent to the distal most fastener, as shown in Figure 8 below.

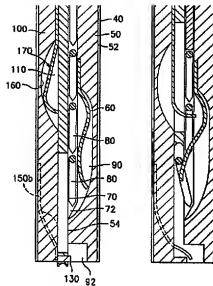
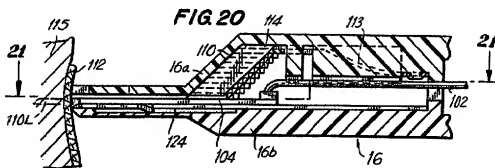


FIG. 7

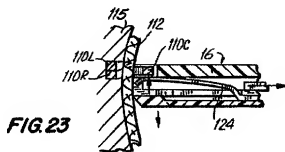
FIG. 8

Nowhere does McGarry disclose a plurality of fasteners, that are arranged in a linear configuration therein, as recited by independent claims 31 and 48. Rather, the surgical staples 110 of McGarry are stacked, one atop another, to extend in a direction that is transverse to the longitudinal axis, as shown in Figure 20, reproduced below. See McGarry Col. 3, Lines 6-9. Therefore, McGarry does not anticipate claims 31 and 48.



In the Office Action, the stop spring of amended claims 31 and 48 was characterized as the ejector spring 124 of McGarry. The Applicant respectfully disagrees with this characterization, since McGarry discloses an ejector spring 124 that releases the distal-most

staple from the anvil members 116, 118 after the staple has been deformed. In contrast, the stop spring of claim 31 and 48 engages a fastener adjacent to the distal-most fastener, instead of the distal-most staple, i.e., the deformed staple, as shown below in Figure 23 of McGarry, reproduced below. See McGarry Col. 18, Lines 20-27.



For at least these reasons, *inter alia*, Applicants respectfully submit that McGarry fails to disclose each and every element recited in independent claims 31 and 48, and therefore, that independent claims 31 and 48 are allowable over McGarry under 35 U.S.C. § 102(b).

As claims 32-33, 35-36, and 41-47 depend from claim 31 and include each element recited therein, for at least the reasons that independent claim 31 is allowable over McGarry under 35 U.S.C. § 102(b), Applicants respectfully submit that claims 32-33, 35-36, and 41-47 are also allowable over McGarry under 35 U.S.C. § 102(b).

Rejections Under 35 U.S.C. §103

Claims 34, 37-38, and 40 were rejected under 35 U.S.C. § 103(a) as being obvious over McGarry in view of U.S. Patent No. 4,619,262 to Taylor (hereinafter "Taylor"). Taylor was cited by the Examiner to allegedly show a slide with a notch and a triangular anvil. Taylor fails to cure the deficiencies of McGarry with respect to claim 31 as discussed above. Thus, for at

least the reasons discussed above with respect to claim 31, *inter alia*, Applicant believes that claims 34, 37-38, and 40 are also in condition for allowance.

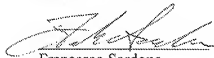
New dependent claim 50 has been added herein and is believed to be allowable over the art of record. New dependent claim 50 is fully supported by the specification and the drawings and does not add new matter herein.

In view of the foregoing amendments and remarks, Applicants respectfully submit that claims 31-50 are in condition for allowance.

Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at the number indicated below.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



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